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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

# ST. PAUL FIRE AND MARINE INSURANCE COMPANY.

**Plaintiff.**

## KINSALE INSURANCE COMPANY.

**Defendant.**

Case No. 1:20-cv-00967-NONE-JLT-  
BAK (BAM)

Consolidated With Case No. 1:20-cv-  
01085-NONE-JLT

**EX PARTE APPLICATION TO  
EXTEND TIME TO FILE JOINT  
STATUS REPORT;  
DECLARATION OF MATTHEW J.  
HAFEEY; DECLARATION OF  
JAMES P. WAGONER; ORDER**

Hon. Jennifer L. Thurston

Complaint Filed: August 5, 2020  
Trial Date: None

**NEW YORK MARINE AND  
GENERAL INSURANCE COMPANY,  
a Delaware corporation,**

**Plaintiff,**

V.

**KINSALE INSURANCE COMPANY,  
an Arkansas corporation.**

## Defendant

**TRC OPERATING COMPANY, INC.,  
a California corporation, TRC  
CYPRESS GROUP, LLC, a California  
Limited Liability Company.**

## Real Parties in Interest.

1 Pursuant to the Court's November 12, 2021 Order (Doc. 24), the Parties are  
 2 required to file a Joint Status Report within 120 days from the date of that Order,  
 3 which is March 12, 2022. On March 10, 2022, New York Marine and General  
 4 Insurance Company ("New York Marine") filed an Ex Parte Application to extend  
 5 the March 12, 2022 deadline to file the Joint Status Report to March 25, 2022 due to  
 6 counsel of record for Kinsale Insurance Company ("Kinsale") recent switch of law  
 7 firms and inability to obtain a Substitution of Attorneys in time to file the Joint Status  
 8 Report by March 12, 2022. (Doc. 33.) By Order dated March 14, 2022 (Doc. 34),  
 9 the Court granted the Ex Parte Application.

10 New York Marine hereby requests, ex parte, that the March 25, 2022 deadline  
 11 to file the Joint Status Report be extended to April 8, 2022 because counsel of record  
 12 for Kinsale has been unable to obtain a Substitution of Attorneys and recently had a  
 13 death in the family which will prevent the Parties from filing the Joint Status Report  
 14 by March 25, 2022. This Ex Parte Application is unopposed.

15 On February 21, 2022, Matthew J. Hafey, counsel of record for Kinsale,  
 16 switched law firms from Nemecek & Cole to Nicolaides, Fink, Thorpe, Michaelides,  
 17 Sullivan LLP ("Nicolaides"). Hafey Decl., ¶ 2. Ms. Berube, the other attorney at  
 18 Nemecek & Cole who is of record in this action, is no longer with the firm. *Id.* There  
 19 are no other attorneys at Nemecek & Cole who are familiar with this file. *Id.* Mr.  
 20 Hafey has not yet obtained a substitution of attorney from Kinsale as its lead counsel  
 21 in this action. Hafey Decl., ¶ 3. When New York Marine filed its Ex Parte  
 22 Application on March 10, 2022, Mr. Hafey believed that a final decision as to whether  
 23 he would remain counsel of record was expected to be made in the subsequent ten  
 24 days. *Id.* However, Mr. Hafey's mother-in-law recently passed away which required  
 25 that he travel to Connecticut to handle funeral arrangements. Hafey Decl., ¶ 4. As a  
 26 result, Mr. Hafey has been unable to "meet and confer" with counsel for New York  
 27 Marine, St. Paul Fire and Marine Insurance Company ("St. Paul"), TRC Operating  
 28 Company, Inc. and TRC Cypress Group, LLP (collectively "TRC") regarding the

1 contents of that Joint Status Report in time for that Report to be filed by March 25,  
2 2022 pursuant to the Court's Orders of November 12, 2021 (Doc. 24) and March 14,  
3 2022 (Doc. 34). Hafey Decl., ¶ 5. Mr. Hafey anticipates that he will be available to  
4 "meet and confer" with counsel for the other parties within the next ten days such that  
5 the parties should be in a position to file the Joint Status Report by April 8, 2022.  
6 Hafey Decl., ¶ 6.

7 In light of counsel for Kinsale being unavailable to "meet and confer" regarding  
8 the contents of the Joint Status Report to be filed by the parties, New York Marine  
9 requests an extension from March 25, 2022 to April 8, 2022 to file the Joint Status  
10 Report pursuant to the Court's Orders of November 12, 2021 (Doc. 24) and March  
11 14, 2022 (Doc. 34). No parties oppose this Ex Parte Application. Wagoner Decl., ¶  
12 5.

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14 Dated: March 23, 2022

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

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By: \_\_\_\_\_



17 James P. Wagoner

18 Kevin D. Hansen

19 Brandon M. Fish

20 Attorneys for Plaintiff New York Marine and  
General Insurance Company

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1                   **DECLARATION OF MATTHEW J. HAFETY**

2                   I, Matthew J. Hafey, declare as follows:

3                   1. I am a partner with the law firm Nicolaides, Fink, Thorpe, Michaelides,  
4 Sullivan LLP (“Nicolaides”). I am a member in good standing of the State Bar of  
5 California, and am admitted to the practice before the above-entitled Court. The  
6 following facts are based upon my personal knowledge. If called as a witness I could  
7 and would testify competently to these facts under oath.

8                   2. Until February 18, 2022, I was a member of the law firm of Nemecek &  
9 Cole which is counsel of record for defendant Kinsale Insurance Company  
10 (“Kinsale”). While at Nemecek & Cole, I was lead counsel for Kinsale in this action.  
11 My associate, Bevin Berube, was also counsel of record. Ms. Berube left the firm in  
12 2021. There are no other attorneys at Nemecek & Cole who are familiar with this file  
13 at this time.

14                  3. I have not yet obtained a Substitution of Attorney replacing Nemecek &  
15 Cole with the Nicolaides firm as counsel of record in this matter. When New York  
16 Marine and General Insurance Company (“New York Marine”) filed its Ex Parte  
17 Application on March 10, 2022, I had expected that a decision would be made in the  
18 subsequent ten days as to whether Kinsale would retain the Nicolaides firm or other  
19 counsel and that a Substitution of Attorney would be filed within that time.

20                  4. However, my mother-in-law was terminally ill and passed away on  
21 March 22, 2022. For this reason, I had to travel to Connecticut for the week of March  
22 21, 2022 to handle funeral arrangements.

23                  5. As a result, I have been unable to obtain a Substitution of Attorney from  
24 Kinsale and have been unable to “meet and confer” with counsel for New York  
25 Marine, St. Paul Fire and Marine Insurance Company, TRC Operating Company, Inc.  
26 and TRC Cypress Group, LLP regarding the contents of that Joint Status Report in  
27 time for that Report to be filed by March 25, 2022 pursuant to the Court’s Orders of  
28 November 12, 2021 (Doc. 24) and March 14, 2022 (Doc. 34).

6. I anticipate that an executed Substitution of Attorney for Kinsale will be filed within the next ten days thereby allowing me nor another attorney to "meet and confer" regarding the contents of that Joint Status Report, such that it can be filed by Friday, April 8, 2022.

I declare under penalty of perjury under that the foregoing is true and correct.

This Declaration was executed by me on March 23, 2022 at Cos Cob,  
Connecticut.

10 /s/Matthew J. Hafey (as approved 3/23/22)  
11 Matthew J. Hafey

1                   **DECLARATION OF JAMES P. WAGONER**

2                   I, James P. Wagoner, declare as follows:

3                   1. I am a member of the law firm McCormick, Barstow, Sheppard, Wayte  
4 & Carruth LLP, counsel herein for Plaintiff New York Marine and General Insurance  
5 Company (“New York Marine”). I am a member in good standing of the State Bar of  
6 California, and am admitted to the practice before the above-entitled Court. The  
7 following facts are based upon my personal knowledge. If called as a witness I could  
8 and would testify competently to these facts under oath.

9                   2. By Order dated November 12, 2021 (Doc. 24), the Court stayed this  
10 action and ordered the parties to file a Joint Status Report within 120 days from the  
11 date of the Order, which is March 12, 2022.

12                  3. On March 9, 2022, I received an email from Matthew Hafey advising  
13 that he was unable to “meet and confer” regarding the contents of the Joint Status  
14 Report because he had been unable to obtain an executed Substitution of Attorney  
15 from his old firm, Nemecek & Cole. Mr. Hafey advised that he believed that he would  
16 have the executed Substitution of Attorney within the next ten days and that he or  
17 another attorney will be in a position to “meet and confer” regarding the Joint Status  
18 Report in time to have it filed by March 25, 2022.

19                  4. On March 10, 2022, New York Marine filed an Ex Parte Application to  
20 extend the deadline to file the Joint Status Report from March 12, 2022 to March 25,  
21 2022 (Doc. 33). The Court granted this extension by Order dated March 14, 2022  
22 (Doc. 34).

23                  5. On March 22, 2022, I received an email from Mr. Hafey advising that he  
24 is unable to “meet and confer” regarding the contents of the Joint Status Report  
25 because his mother-in-law recently passed away which required that he travel to  
26 Connecticut for the week of March 21, 2022 and to handle funeral arrangements. Mr.  
27 Hafey requested another two weeks in order to handle family matters and to obtain  
28 the executed Substitution of Attorney.

1       6. By emails dated March 22 and 23, 2022, counsel for St. Paul Fire and  
2 Marine Insurance Company, TRC Operating Company, Inc. and TRC Cypress Group,  
3 LLP advised that they do not oppose this Ex Parte Application.

4       I declare under penalty of perjury under that the foregoing is true and correct.  
5 This Declaration was executed by me on March 23, 2022 in Fresno, California.

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James P. Wagoner

## ORDER

The Court, having reviewed the Ex Parte Application To Extend Time To File Joint Status Report and the Supporting Declarations of Matthew J. Hafey and James P. Wagoner, and good cause showing, HEREBY ORDERS as follows:

1. The time for the Parties to file their Joint Status Report pursuant to the Orders dated November 12, 2021 and March 14, 2022 is extended from March 25, 2022 to April 8, 2022.

IT IS SO ORDERED.

Dated: **March 24, 2022**

/s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE